

**CITY OF HAYWARD**  
**AGENDA REPORT**

AGENDA DATE 01/06/04

AGENDA ITEM 7

WORK SESSION ITEM \_\_\_\_\_

**TO:** Mayor and City Council

**FROM:** Director of Community and Economic Development

**SUBJECT:** Substitution of Credit Enhancement, Restatement of the Regulatory Agreement and Replacement of the Intercreditor Agreement for \$35,000,000 Multifamily Housing Revenue Bonds (Shorewood [Waterford] Apartments Project 1984 Series A)

**RECOMMENDATION:**

It is recommended that the City Council adopt the attached resolution approving the change of credit enhancement to the Federal National Mortgage Association (Fannie Mae) and the amended Regulatory Agreement, Indenture, Loan Agreement and Remarketing Agreement.

**DISCUSSION:**

In August 1984, the City issued \$35,000,000 in multifamily housing revenue bonds ("bonds") for the development of a 545 unit mixed income rental apartment development. Twenty percent of the units (109) are set aside for rental at an affordable price by low and moderate income households whose household income is at or below 80% of area median income adjusted for household size (e.g. \$49,000 for a household of two and \$55,200 for a household of three). The remaining 436 units are rented at market rate. In 1993, the City approved amendments to the Regulatory Agreement and Intercreditor Agreement changing Trustee, the Credit Enhancement and the Servicer; in 1994, the City approved a change of ownership that placed this property in a Real Estate Investment Trust (REIT). The current credit enhancement for the bonds is a Municipal Bond New Issue Insurance Policy issued by Financial Guaranty Insurance Company (FGIC Credit).


The owner would like to replace the FGIC Credit with a credit enhancement from Fannie Mae (Federal National Mortgage Association). The FGIC Credit is due to expire in March 2004. Fannie Mae offers a AAA-rated long term credit facility. This credit enhancement will be permanent for the life of the bonds. In return for being the credit provider, Fannie Mae will require changes to the Intercreditor Agreement to protect its interest in the property. In addition, Fannie Mae requires that a Rider be attached to the Regulatory Agreement. If there were to be an event of default, Fannie Mae (as the credit provider) will take over the project and convey the title to a new owner. The term of the Regulatory Agreement to cover the 109 affordable units has been extended from 2008 until 2014 when the bonds will be retired.

Since the 1984 Regulatory Agreement has been amended twice to-date, the City is requiring that the Regulatory Agreement be fully restated to produce a clear and cogent document for Waterford property management staff to follow and the City staff to use in monitoring. In addition, this Regulatory Agreement will include a schedule of fees for non-compliance with the

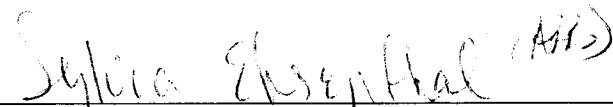
Regulatory Agreement. As Council is aware, City staff is responsible for monitoring the bond projects for compliance with Internal Revenue Code requirements for tenant income certification and reporting. Prior to the implementation of this schedule, the City's only recourse to compel bond project property management staff to provide timely, accurate tenant certifications and reports was to recommend to the Trustee that the bonds should be called for non-compliance. City staff has, in the past, and will continue to provide training in tenant certification and reporting to bond project property management. However, if there is continued non-compliance after the property owner has been notified and training has occurred, the owner can be charged a fee for each tenant certification, re-certification or report that is out of compliance.

As Council is aware, payment of the bond principal and interest is solely from the project revenues and not an obligation of the City of Hayward. Staff recommends adoption of the attached resolution because the Fannie Mae credit enhancement makes the project financing more secure and the owner is not taking any money out of the project. All of the documents, in substantially final form, related to this action are on file in the Office of the City Clerk.

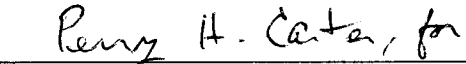
Prepared by:

  
\_\_\_\_\_  
Ann R. Bauman  
Neighborhood and Economic Development Manager

Recommended by:

  
\_\_\_\_\_  
Sylvia Ehrenthal, Director of Community  
and Economic Development

Approved by:

  
\_\_\_\_\_  
Jesús Armas, City Manager

Resolution

# DRAFT

HAYWARD CITY COUNCIL

RESOLUTION NO. \_\_\_\_\_

Introduced by Council Member \_\_\_\_\_

*mtl*  
*12/30/93*

A RESOLUTION OF THE CITY OF HAYWARD  
AUTHORIZING A SECOND SUPPLEMENT TO  
INDENTURE, THE SECOND AMENDMENT AND  
RESTATEMENT OF AN INDENTURE OF TRUST, AN  
AMENDED AND RESTATED REGULATORY  
AGREEMENT, AN ASSIGNMENT AND INTERCREDITOR  
AGREEMENT, AND A FINANCING AGREEMENT  
RELATING TO THE CITY OF HAYWARD VARIABLE  
RATE DEMAND MULTIFAMILY HOUSING REVENUE  
BONDS (SHOREWOOD APARTMENTS PROJECT) 1984  
SERIES A, AND AUTHORIZING THE EXECUTION AND  
DELIVERY OF AND APPROVING OTHER RELATED  
DOCUMENTS AND APPROVING OTHER RELATED  
ACTIONS IN CONNECTION THEREWITH

WHEREAS, the City of Hayward Multifamily Housing Revenue Bond Law (the "Act") authorizes the City of Hayward (the "City"), to incur indebtedness for the purpose of providing multifamily residential housing for persons of low or moderate income;

WHEREAS, the City previously issued its \$35,000,000 initial principal amount of Variable Rate Demand Multifamily Housing Revenue Bonds (Shorewood Apartments Project), 1984 Series A (the "Bonds"), of which \$33,100,000 is outstanding, pursuant to the Act to provide financing for the acquisition, construction and development of a multifamily rental housing development, now known as Waterford Apartments and located in the City of Hayward, California (the "Project"); and

WHEREAS, the City and Chemical Trust Company of California (the "Original Trustee"), as predecessor to Bank of America National Trust and Savings Association (the "1994 Trustee"), entered into an Indenture of Trust, dated as of August 1, 1984, providing for the issuance of and securing the Bonds, as such Indenture of Trust was amended by an Amended and Restated Indenture of Trust, dated as of June 25, 1993 between the City and the Original Trustee, and further supplemented and amended by a First Supplement to the Indenture, dated March 17, 1994, between the City and the 1994 Trustee, as predecessor in interest to U.S. Bank National Association, as trustee (the "Trustee") (as amended, the "Prior Indenture"); and

WHEREAS, the City, the Trustee and San Francisco Bay Partners I, Ltd. (the "Original Borrower") entered into a Loan Agreement, dated as of August 1, 1984, providing for the loan of the proceeds of the Bonds to the Borrower, as such Loan Agreement was amended by an Amended and Restated Loan Agreement, dated as of June 25, 1993, among the City, the Trustee, and the Original Borrower and North Waterford Apartments, a California limited partnership, the predecessors to Bay Waterford Inc., a Maryland Corporation (the "Borrower") (as amended, the "Loan Agreement"); and

WHEREAS, the City, the Trustee and the Original Borrower entered into a Regulatory Agreement, dated as of August 1, 1984, as such agreement was amended by (i) a First Amendment to Regulatory Agreement dated June 25, 1993 and (ii) a Second Amendment to Regulatory Agreement, dated as of March 17, 1994 (as amended, the "Original Regulatory Agreement"), providing for certain requirements applicable to the Project; and

WHEREAS, the Borrower desires to substitute a credit enhancement facility issued by Fannie Mae ("Fannie Mae") for the credit enhancement currently securing the Bonds; and

WHEREAS, in anticipation of such credit facility substitution, the Borrower has requested that the City and the Trustee amend the Prior Indenture for the purpose of providing for notice to Bondowners and the mandatory purchase of the Bonds in order to accomplish the credit facility substitution, in the form of a Second Supplement to the Indenture (the "Second Supplement to the Indenture"); and

WHEREAS, in connection with the credit facility substitution, the Borrower has requested that the City and the Trustee further amend and restate the Prior Indenture, together with the Borrower amend and restate the Original Regulatory Agreement, and, together with the Borrower, execute a Financing Agreement, all in the respective forms of, and for the reasons and purposes set forth in, the respective forms of, the Second Amended and Restated Indenture of Trust (the "Indenture"), the Amended and Restated Regulatory Agreement (the "Amended Regulatory Agreement"), and the Financing Agreement (the "Financing Agreement") presented at this meeting; and

WHEREAS, the Indenture and the Amended Regulatory Agreement may be amended and/or restated pursuant to the provisions of the Indenture and the Original Regulatory Agreement, respectively, upon compliance with certain provisions thereof, which provisions shall be complied with prior to execution and delivery of such amendments; and

WHEREAS, in connection with such credit facility substitution, Fannie Mae has requested that the Authority enter into an Assignment and Intercreditor Agreement, in the form of the Assignment and Intercreditor Agreement (the "Intercreditor Agreement") presented at this meeting; and

WHEREAS, all conditions, things and acts required to exist, to have happened and to have been performed precedent to the remarketing of the Bonds and the amendment, execution and delivery of the documents referred to herein exist, have happened and have been performed in due time, form and manner as required by the laws of the State of California, including the Act.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward, as follows:

Section 1. The City hereby finds and declares that the above recitals are true and correct.

Section 2. Pursuant to the Act and the Indenture, the City hereby authorizes remarketing of the Bonds in an aggregate principal amount not to exceed \$33,100,000.

Section 3. The Second Supplement to the Indenture and the Indenture, in the forms presented to this meeting, are hereby approved. The City Manager of the City, or a written designee of the City Manager, is, and each of them acting alone is, hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver the Second Supplement to the Indenture and the Indenture, and the City Clerk (or a written designee of the City Clerk) is hereby authorized and directed, for and in the name and on behalf of the City, to attest the City Manager's (or a written designee of the City Manager) signature on the Second Supplement to the Indenture and the Indenture, in substantially the forms presented to this meeting, with such additions thereto or changes therein as are recommended or approved by the City Manager upon consultation with bond counsel to the City, including such additions or changes as are necessary or advisable in accordance with Section 6 hereof (provided that no additions or changes shall authorize an aggregate principal amount of Bonds in excess of \$33,100,000), the approval of such additions or changes to be conclusively evidenced by the execution and delivery by the City of the Second Supplement to the Indenture and the Indenture. The date, maturity dates, interest rate or rates, interest payment dates, denominations, form registration privileges, manner of execution, place of payment, terms of redemption, and other terms of the Bonds shall be as provided in the Indenture as finally executed.

Section 4. The Financing Agreement among the Trustee, the City and the Borrower, in the form presented to this meeting, is hereby approved. The City Manager, or a written designee of the City Manager, is, and each of them acting alone is, hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver the Financing Agreement in said form, with such additions thereto or changes therein as are recommended or approved by the City Manager upon consultation with bond counsel to the City including such additions or changes as are necessary or advisable in accordance with Section 6 hereof, the approval of such additions or changes to be conclusively evidenced by the execution and delivery by the City of the Financing Agreement.

Section 5. The Amended Regulatory Agreement among the City, the Trustee and the Borrower, in the form presented to this meeting, is hereby approved. The City Manager of the City (or a written designee of the City Manager) is, and each of them acting alone is, hereby authorized and directed for and in the name of and on behalf of the City, to execute and deliver the Amended Regulatory Agreement in said form, with such additions thereto or changes therein as are recommended or approved by the City Manager upon consultation with bond counsel to the City including such additions or changes as are necessary or advisable in accordance with Section 6 hereof, the approval of such changes to be conclusively evidenced by the execution and delivery by the City of such Amended Regulatory Agreement.

Section 6. All actions heretofore taken by the officers and agents of the City with respect to the remarketing of the Bonds are hereby approved, confirmed and ratified, and the City Manager (or a written designee of the City Manager), is hereby authorized and directed, for and in the name and on behalf of the City, to do any and all things and take any and all actions and execute and deliver any and all certificates, agreements and other documents which the City Manager (or a written designee of the City Manager), may deem necessary or advisable in order to consummate the lawful remarketing and reissuance of the Bonds in accordance with this Resolution and resolutions heretofore adopted by the City, including but not limited to the Intercreditor Agreement and those certificates, agreements and other documents described in the Second Supplement to the Indenture, the Indenture, the Financing Agreement, the Amended Regulatory Agreement, and the other documents herein approved, and any certificates, agreements or documents as may be necessary to further the purpose hereof, evidence credit support or additional security for the Bonds, but which shall not create

any obligation or liability of the City other than with respect to the revenues and assets derived from the proceeds of the Bonds or loan payments from the Borrower.

Section 7. This resolution shall take effect immediately upon its adoption.

IN COUNCIL, HAYWARD, CALIFORNIA, January 6, 2004,

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS

MAYOR:

NOES: COUNCIL MEMBERS

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS

ATTEST: \_\_\_\_\_  
City Clerk of the City of Hayward

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney of the City of Hayward